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April 15, 1996

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APR 15 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

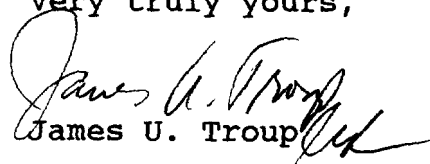
Re: Comments of Iowa L.P. 136  
PCS D, E, and F Block Rule Making  
WT Docket No. 96-59 & GN Docket No. 90-314

Dear Mr. Caton:

On behalf of Iowa L.P. 136, there is transmitted herewith an original and nine (9) copies of its comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceedings, released March 20, 1996. Sufficient copies are being provided so that each Commissioner should receive a copy.

Please direct any questions regarding this filing to the undersigned.

Very truly yours,

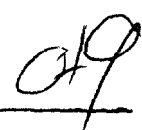
  
James U. Troup

Enclosures

cc: Mr. Mark Bolinger, FCC (hand delivery).

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )

)  
Amendment of Parts 20 and 24 of )  
the Commission's Rules -- )  
Broadband PCS Competitive Bidding )  
and the Commercial Mobile Radio )  
Service Spectrum Cap )

WT Docket No. 96-59

)  
Amendment of the Commission's )  
Cellular PCS Cross-Ownership Rule )

GN Docket No. 90-314

**COMMENTS OF  
IOWA L.P. 136**

DOCKET FILE COPY ORIGINAL

To: The Commission

Iowa L.P. 136, by counsel, hereby submits its comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned matters.<sup>1</sup> Iowa L.P. 136 is a small wireless telecommunications business seeking enter the PCS market. Iowa L.P. 136 was a bidder in the C block auction. As such, Iowa L.P. 136 has a strong interest in the outcome of this proceeding.

Iowa L.P. 136 is troubled by the mounting evidence that the only small businesses that achieved success in the C block auction are those with substantial backing from large entities that would be otherwise ineligible to participate in the entrepreneurs' auction.<sup>2</sup> Also troublesome is the inadequacy of the FCC's rules

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<sup>1</sup> In the Matter of Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap (WT Docket No. 96-59) and Amendment of the Commission's Cellular PCS Cross-Ownership Rule (GN Docket No. 90-314), Notice of Proposed Rule Making, FCC 96-119 (released March 20, 1996) (the "Notice").

<sup>2</sup> See, e.g., "South Korean Money Pumps Up Auction for Wireless Licenses," The Washington Post, April 4, 1996, at D9 (describing how auction high bidder NextWave Personal Communications, Inc., is funded almost entirely by South Korean equipment manufacturers through non-attributable loan arrangements).

to prevent this result. Accordingly, Iowa L.P. 136 urges the FCC to take all necessary action to allow small businesses to provide spectrum-based services to the public, as mandated by Section 309(j), consistent with the need to proceed expeditiously with simultaneous auctions for the three 10-MHz blocks. To these ends, Iowa L.P. 136 proposes the following:

**I. Treatment of Designated Entities.**

**A. Small Business Provisions in the D and E Blocks.**

Because so many small businesses have been excluded from meaningful participation in the C block auction, Iowa L.P. 136 proposes that the Commission set aside the D and E blocks, in addition to the F block, as small business blocks. By doing so, the Commission can fulfill the statutory mandate of "disseminating licenses among a wide variety of applicants, including small businesses."<sup>3</sup> Only by giving small businesses an opportunity to aggregate a full 30 MHz of spectrum in the D, E, and F block auctions can small businesses have any hope of commercial success.

If the FCC is unwilling to set aside all three 10-MHz blocks for small businesses, Iowa L.P. 136 strongly supports the Commission's proposal to provide small-business bidding preferences in the D and E block auctions. In either event, however, the rules must be structured to prevent abuse.

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<sup>3</sup> 47 U.S.C. § 309(j)(3).

**B. Affiliation Rules.**

**1. Loan Agreements.**

If C block bidder NextWave is a representative example,<sup>4</sup> large entities are circumventing the attribution rules by using financing arrangements instead of equity ownership to make their presence felt in the entrepreneurs' block auction.

This strategy is virtually the same as using options (in lieu of actual equity ownership) to insulate an ineligible investor. Yet the FCC has prevented the options strategy by deeming options as exercised for attribution purposes.<sup>5</sup> Loan arrangements, particularly where they include options to convert the loan amount to equity, should be deemed attributable also.

**2. Restrictions on Transfer of Licenses.**

Large companies can also be discouraged from using small businesses as fronts if the license holding period is longer. To avoid the dangers inherent in an outright ban on all assignments, the FCC should only permit assignments to entities that qualify as small businesses (or would have qualified at the time of the auction short-form deadline).

This prohibition should extend indefinitely. A shorter holding period would not provide an effective deterrent for entities entering the auction with the expectation of holding the license only for the minimum time.

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<sup>4</sup> See supra note 2.

<sup>5</sup> 47 CFR § 24.720 (1)(5).

**3. Discovery and Depositions in Petition to Deny Proceedings.**

The high anticipated value of PCS spectrum creates strong incentives for entities to attempt to abuse the designated entity provisions and other aspects of the rules, such as the real-party-in-interest restrictions. Given this temptation, no certifications or long-form disclosure requirements can ever protect entirely against unscrupulous applicants. With this in mind, and given the FCC's limited enforcement resources, the auction rules wisely provide for a petition to deny process to allow other parties to bring such matters to light.

Unfortunately, however, outside petitioners will rarely have access to the information necessary to prove that an applicant has violated the rules. Iowa L.P. 136 therefore urges the Commission to expand the scope of the petition to deny proceeding to give petitioners the right to full discovery of the winning applicant's relevant papers and documents, and to require depositions under oath where appropriate. These requirements are consistent with the Commission's authority pursuant to Section 409 of the Communications Act of 1934, as amended (47 USC § 409).

Only by allowing other parties to force disclosure of abuse can the goals of Section 309(j) truly be realized.

**4. Eligibility Standards.**

The FCC should adopt its proposal to use the same equity structure allowances and other eligibility standards for the F block (and also the D and E blocks if those are set aside as proposed above) as were used in the C block. These standards

include the eligibility thresholds for the entrepreneurs' block and the allowable equity structures.

The C block standards are complicated enough, making it difficult for small entities to assure compliance. Any new set of qualification rules would only add to the complexity. Iowa L.P. 136 recommends that no changes be adopted except those that are necessary to correct the abuses discussed above.

**C. Small Business Incentives.**

In the Notice, the FCC has proposed to apply the same small business incentives used in the C block, including bidding credits, installment payment terms, and reduced down payment amounts, to the F block auction. Iowa L.P. 136 generally supports this proposal. These provisions should apply in the D and E block auctions as well, whether or not the D and E blocks are set aside as small business blocks as Iowa L.P. 136 proposes.<sup>6</sup>

Application of consistent small business bidding preferences will allow small businesses to proceed with their business plans in a stable regulatory environment. The reduced down payment amounts are a de minimus consideration for most bidders when compared to the total level of capital needed to build out a system and fund start-up costs. Similarly, installment payment terms are a two-edged sword, as the government lien on the spectrum can deter private lenders that might otherwise invest in infrastructure development. Still, the FCC will probably best succeed in encouraging small business participation by providing a consistent set of incentives.

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<sup>6</sup> See supra Section I.A.

Further, it remains to be seen whether the reduced amount of spectrum available in the 10-MHz D, E, and F block auction would lower license bids enough to justify downward adjustments in the small business preferences. Indeed, C block licenses have proved to be more expensive on a per-MHz-pop basis than were A or B block licenses, particularly if the additional costs of government financing are factored in. The amount of spectrum provided by a license is only one variable, and does not in and of itself justify a change in policy.

**D. Small Business Definition.**

The goal of regulatory consistency also favors retaining the C block definition of a small business. However, Iowa L.P. 136 would discourage the Commission from making an exception for entities that no longer fit the definition because of their success in the C block auction. Their success makes them no different from any other entity that does not qualify for the incentives. Indeed, the FCC's mandate under Section 309(j) is to disseminate licenses to small businesses and to "avoid excessive concentration of licenses."<sup>7</sup> This goal can best be served by maintaining the current definition, without any special exception for C block winners.

**II. Auction Schedule.**

Iowa L.P. 136 strongly supports the FCC's proposals to auction the three 10-MHz blocks simultaneously, and to do so without delay.

If the FCC institutes Iowa L.P. 136's proposal to set aside the D and E blocks, in addition to the F block, as small business

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<sup>7</sup> 47 U.S.C. § 309(j)(3).

blocks, then all three blocks could be licensed in a single auction. If not, Iowa L.P. 136 supports a single auction for the D and E blocks concurrent with the F block auction.

In either event, the simultaneous availability of three licenses for each service area will give all bidders, particularly small businesses, greater flexibility to meet their spectrum needs. The availability of additional licenses may also reduce artificial upward pressure on bid amounts, as may have occurred in the C block auction.

Moreover, the FCC is correct that the D, E, and F block auctions should be held as soon and as quickly as possible. Many entities that anticipate participating in the D, E, and F block auctions will be competing for the same subscriber base as A, B, and C block license holders. Each day of delay erodes the financial markets' confidence in later licensees as potential competitors. Delay is also likely to reduce the value of the licenses.

The FCC should hold the D, E, and F block auctions concurrently, and as soon as possible.

#### **CONCLUSION**

To remedy the exclusion of many small businesses from meaningful participation in the C block auction because of the apparently widespread use of qualified small businesses as shells for larger entities in the C block auction, the D, E, and F blocks should all be set aside as entrepreneurs' blocks. To guard against similar abuse in these auctions, the FCC should strengthen its affiliation rules to allow scrutiny of loan agreements. Full discovery, including depositions under oath, should be allowed in



the long-form petition to deny process. And entrepreneurs' block auction winners should not be allowed to transfer their licenses to an ineligible entity at any time.

In the interest of allowing legitimate small businesses to proceed with their business plans in a stable regulatory environment, the small business bidding preferences applicable to the D, E, and F block auctions should be the same as those used in the C block auction. The same definition of a small business also should apply.

The Commission should adopt its proposal to auction the D, E, and F blocks simultaneously -- in the same auction, if possible. This will allow bidders to aggregate the 30 MHz needed for a viable service, and alleviate pressure on license values. The D, E, and F block licenses should be auctioned off as soon as possible because these PCS providers will be competing for the same customer base as the A, B, and C block winners.

Respectfully submitted,

IOWA L.P. 136

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